

Office of Chief Counsel
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Memorandum

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to: Linda P. Azmon
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from: Roy A. Hirschhorn
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subject: Treatment of Court Registry Funds under § 468B

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

Taxpayer =

B =

Law1 =

Law2 =

Fund =

Governmental Entity =

ISSUE

Whether Fund, which aggregates court registry items from B courts, constitutes a disputed ownership fund (DOF) under §1.468B-9 of the Income Tax Regulations.

CONCLUSION

Fund constitutes a DOF under §1.468B-9.

FACTS

The B courts continuously maintain numerous interest-bearing court registry items. Several of the B courts currently pool the court registry items into one investment system, Fund. Fund is comprised of an aggregation of court registry items and invests the court registry items in government securities. Fund is overseen by Taxpayer and was created to protect the principal of the court registry items. Once deposited in Fund at the Governmental Entity, the court registry items never leave the Governmental Entity and cannot be bought, sold, or traded outside of the Governmental Entity. Fund also ensures that court registry items are readily available to meet court-ordered disbursements when litigation is resolved.

The court registry items consist of cash deposited by court orders in the registries of B courts pending the resolution of litigation. The court registry items are subject to conflicting claims of ownership of various parties. The ownership of the court registry items is considered undefined pending the court's determination of ownership. The court registry items are held in the name and to the credit of the court. Clerks of the court are required to invest those court registry items in interest-bearing accounts or court-approved interest bearing instruments pursuant to Law1. A court order is required for any disbursement from a court registry item pursuant to Law2.

Maintaining court registry items that qualify as DOFs on an item-by-item basis will create administrative burdens on the courts and impose costs that are larger than the amounts of interest earned.

Taxpayer requests that the B courts be able to treat Fund as a single DOF using a single employer identification number for purposes of filing a single federal income tax return rather than file multiple returns on an individual basis for each court registry item invested in Fund.

LAW AND ANALYSIS

Section 468B(g)(1) of the Internal Revenue Code provides generally that escrow accounts, settlement funds, and similar funds are subject to current income tax. Further, § 468B(g)(1) provides that the Secretary shall prescribe regulations providing for the taxation of any such account or fund.

Section 1.468B-9 provides for the current taxation of income of a DOF. A DOF is an escrow account, trust, or fund that (1) is established to hold money or property subject to conflicting claims of ownership, (2) is subject to the continuing jurisdiction of a court, (3) requires the approval of the court to pay or distribute money or property to, or on behalf of, a claimant, transferor, or transferor-claimant, and (4) is not a qualified settlement fund under §1.468B-1, a bankruptcy estate (or part thereof) resulting from the commencement of a case under title 11 of the United States Code, or a liquidating trust under §301.7701-4(d) (except as provided in §1.468B-9(c)(2)(ii)). Section 1.468B-9(b)(1).

A DOF is taxable as a qualified settlement fund under the rules of §1.468B-2 (with certain exceptions) if all the assets transferred to the DOF by or on behalf of transferors are passive investment assets. Section 1.468B-9(c)(1)(ii). The administrator of the DOF must obtain an employer identification number for the fund, make all required income tax and information returns, and deposit all tax payments. Section 1.468B-9(c)(1). The administrator is the person designated by the court having jurisdiction over the DOF; if no person is designated, the administrator is the escrow agent, escrow holder, trustee, receiver, or other person responsible for administering the DOF. Section 1.468B-9(b)(2).

A court registry item that qualifies as a DOF is subject to current income taxation. Section 468B(g)(1). As an initial matter, a DOF must be “an escrow account, trust, or fund”. Section 1.468B-9(b)(1). The term “fund” used throughout §468B and accompanying regulations is not defined. The statute, regulations, and legislative history do not preclude a “fund” from being an aggregation of items. Prior to the enactment of § 468B(g), it was unclear how items deposited pursuant to a court order and held on behalf of litigants should be reported for federal tax purposes. See Rev. Rul. 64-131, 1964-1 C.B. 485. The enactment of § 468B(g) clearly reflects Congressional intent that such items are subject to current taxation. See Rev. Rul. 92-51, 1992-2 C.B. 102; H.R. Report No. 841, 99th Cong., 2d Sess. (1986), 1986-3 C.B. 844 (obsoleting Rev. Rul. 71-119, 1971-1 C.B. 163 legislatively). This legislative intent is not thwarted by, or inconsistent with, treating an aggregation of court registry items as a “fund” under the statute. Even though each court registry item included in Fund could perhaps be a separate DOF if set up that way, that fact does not preclude Fund from qualifying as a DOF itself. Current taxation under § 468B(g)(1) is achieved with either the item-by-item or aggregated arrangement. Therefore, under the facts of this case, Fund is a “fund” under § 468B.

We conclude that the aggregation of court registry items into Fund is a DOF pursuant to §1.468B-9(b)(1) because: (1) it is established to hold cash subject to conflicting claims of ownership, (2) it is subject to the continuing jurisdiction of B courts, (3) it requires the approval of a B court to distribute cash to, or on behalf of, a claimant, transferor, or transferor claimant, and (4) it is not a qualified settlement fund, bankruptcy estate, or liquidating trust. As a result, Fund may follow the rules contained in §1.468B-9 as applicable to a single DOF.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

No opinion is expressed or implied whether each court registry item or an aggregated fund other than Fund qualifies as a DOF under § 1.468B-9. No opinion is expressed with respect to property or other items that are not cash.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 317-7007 if you have any further questions.

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